



This document is scheduled to be published in the Federal Register on 09/21/2016 and available online at <https://federalregister.gov/d/2016-22714>, and on [FDsys.gov](https://fdsys.gov)

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PS Docket No. 16-269, FCC 16-117]

Procedures for Commission Review of State Opt-Out Requests from the FirstNet Radio Access Network

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission opens a new proceeding relating to the National Public Safety Broadband Network being implemented by the First Responder Network Authority (FirstNet). The proceeding seeks comment on proposed procedures for administering the Commission's role in the State opt-out process from the FirstNet radio access network as provided under the Middle Class Tax Relief and Job Creation Act of 2012, as well as on the Commission's implementation of the specific statutory standards by which it is obligated to evaluate State opt-out applications.

DATES: Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply comments are due on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESS: You may submit comments, identified by PS Docket No. 16-269–87, by any of the following methods:

- Federal Communications Commission's Web site: <http://fjallfoss.fcc.gov/ecfs2/>. Follow the instructions for submitting comments.

• People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email:

FCC504@fcc.gov

or phone: 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy and Licensing Division, Public Safety and Homeland Security Bureau, (202) 418-1428.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, PS Docket No. 16-269, FCC 16-117, released on August 25, 2016. The document is available for download at http://fjallfoss.fcc.gov/edocs_public/. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to FCC504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

1. In the Notice of Proposed Rulemaking (NPRM), the Commission opens a new proceeding relating to the National Public Safety Broadband Network (NPSBN) being implemented by the First Responder Network Authority (FirstNet) pursuant to the provisions of the Middle Class Tax Relief and Job Creation Act of 2012 ("Public Safety Spectrum Act" or "Act"). The NPRM seeks comment on proposed procedures for

administering the Commission's role in the State opt-out process from the FirstNet radio access network as provided under the Act, as well as on the Commission's implementation of the specific statutory standards by which it is obligated to evaluate State opt-out applications.

2. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments in PS Docket No. 16-269 on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

3. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with

rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

4. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

5. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to § 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. See Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, Report and Order, 13 FCC Rcd 24816 (1998), Order on Reconsideration, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act (FOIA) must be publicly disclosed pursuant to an appropriate request. See 47 CFR 0.461; 5 U.S.C. 552. We note that the Commission may grant requests for confidential treatment either conditionally or

unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

6. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt,

searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Procedural Matters

A. Initial Regulatory Flexibility Analysis

7. The Initial Regulatory Flexibility Analysis required by section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, is included in appendix C of the NPRM.

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be filed by the same dates as listed on the first page of the NPRM and must have a separate and distinct heading designating them as responses to this IRFA. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.

B. Need for, and Objectives of, the Proposed Rules

9. The NPRM seeks comment on proposals to implement provisions of the Middle Class Tax Relief and Job Creation Act of 2012 ("Public Safety Spectrum Act" or "Act") governing deployment of the Nationwide Public Safety Broadband Network (NPSBN) in the 700 MHz band.

10. The Public Safety Spectrum Act establishes the First Responder Network Authority (FirstNet) to oversee the construction and operation of the NPSBN as licensee

of both the existing public safety broadband spectrum (763-769/793-799 MHz) and the spectrally adjacent D Block spectrum (758-763/788-793 MHz). The Act directs the Federal Communications Commission (FCC or Commission) to reallocate the D Block for public safety services, to license the D Block and the existing public safety broadband spectrum to FirstNet and to take other actions necessary to “facilitate the transition” of such existing spectrum to FirstNet. The Act gives each State the option to opt out of FirstNet’s Radio Access Network (RAN) deployment within that State and conduct its own RAN deployment.

11. Proposals in the NPRM are intended to provide States and other interested parties with clarity and an opportunity to comment on the procedures that the Commission will establish for filing and review of State opt-out requests and associated alternative State plans, the content to be included in state opt-out filings with the Commission, and the evaluation process that the Commission will use to approve or disapprove State opt-out requests in accordance with the criteria specified in the Act.

C. Legal Basis

12. The proposed action is authorized under pursuant to sections 1, 4(i), 4(j), 301, 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 316, as well as title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law No. 112-96, 126 Stat. 156.

D. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

13. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules proposed

herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A “small business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (“SBA”). Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes we propose in this document.

14. As an initial matter, we observe that the Public Safety Spectrum Act does not contemplate that “small governmental jurisdictions” would be directly authorized to serve as operators of their own 700 MHz public safety broadband networks. Rather, the Act charges a single entity, FirstNet, with constructing, operating, and maintaining the NPSBN on a nationwide basis. Accordingly, the requirements the NPRM proposes or considers for the combined 700 MHz public safety broadband spectrum—in which FirstNet will operate on a nationwide basis—will not directly affect a substantial number of small entities. The absence of a direct effect on a substantial number of small entities suggests that it is not necessary to prepare a regulatory flexibility analysis in connection with these proposed requirements.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The NPRM seeks comment on when State Governors will be required to notify FirstNet, NTIA, and the Commission if they wish to opt out of the NPSBN. Specifically the NPRM proposes to require States electing to opt out of the NPSBN to

file a notification with the Commission no later than 90 days after the date they receive electronic notice of FirstNet's final proposed plan for the State. The NPRM also seeks comment how notice should be provided and on whether an entity other than a State Governor, such as the Governor's designee should be permitted to complete this filing requirement.

16. The NPRM seeks comment on the Act's provision that States choosing to opt out have 180 days to "develop and complete" requests for proposals (RFPs). In particular, the NPRM seeks comment on what showing is sufficient to demonstrate that a State has "completed" its RFP within the 180-day period. The NPRM further proposes that, if a State notifies the Commission of its intention to opt out of the NPSBN, the State will have 180 days from the date it provides such notification to submit its alternative plan to the Commission. The NPRM proposes to treat a State's failure to submit an alternative plan within the 180-day period as discontinuing that State's opt out process and forfeiting its right to further consideration of its opt-out request. The NPRM seeks comment on what an opt-out State should be required to include in its alternative plan for the plan to be considered complete for purposes of the Commission's review.

17. The NPRM seeks comment on whether States should be required to file their alternative plans in PS Docket No. 16-269, and the scope and types of information that must be included in the submission. The NPRM also seeks comment on whether States should be allowed to file amendments or provide supplemental information to the plan once it is filed with the Commission and prior to the Commission's decision. Should Commission staff be permitted to discuss or seek clarification of the alternative plan contents with the filer? If a plan is deemed sufficient for our purposes before a

State awards a contract pursuant to its RFP, should the Commission condition approval on substantial compliance with the approved plan under the awarded contract, or should this be addressed by NTIA under its “ongoing” interoperability evaluation?

18. The NPRM also seeks comment on who should have access to and the ability to comment on State alternative plans. In this regard, the NPRM seeks comment on the extent to which State alternative plans may contain confidential, competitive, or sensitive information or information that implicates national security. Should State plans be treated as confidential, with public notice limited to identifying which States have elected to opt out and filed an alternative plan? If so, should the Commission require such filing, and should the public be given an opportunity to comment on them? If State plans were filed publicly, would the Commission’s existing rules allowing parties to request confidential treatment for their filings provide adequate protection of sensitive information? Alternatively, given the likelihood of sensitive information and the limited scope of the Commission’s review of State plans under section 6302(e)(3)(C)(i) of the Act, should the Commission limit the parties that are entitled to review and comment on such plans? Should comment be limited to specific issues?

19. The NPRM also seeks comment on whether FirstNet and/or NTIA should be allowed access and the ability to comment to the Commission on State plans within a defined comment period. Assuming that FirstNet and NTIA are afforded a right to comment on State plans, should States have the right to respond to such comments? What rights, if any, should States have to review or comment on alternative plans submitted by other States? What other procedures are appropriate for the Commission’s

review of such plans? How can the Commission most appropriately ensure that it has heard all “evidence pertinent and material to the decision”?

20. The NPRM proposes that each alternative plan submitted to the Commission should receive expeditious review. The NPRM proposes to establish a “shot clock” for Commission action on alternative plans to provide a measure of certainty and expedience to the process. The NPRM seeks comment on what an appropriate shot clock period would be.

21. The NPRM seeks comment on the standard against which alternative State plans will be evaluated, specifically with respect to the Act’s requirements that alternative plans demonstrate: (1) that the State will be in compliance with the minimum technical interoperability requirements developed under section 6203, and (2) interoperability with the nationwide public safety broadband network.

22. Under the first prong, the NPRM seeks comment on the utilization of RAN-related requirements specified in the minimum technical interoperability requirements. Specifically, the NPRM proposes that review under this prong would include requirements (1) - (3), (7) - (10), (20) - (25), (29), (39), (41) - (42) from the Board Report, as documented in Appendix B of the NPRM.

23. Under the second prong, the NPRM proposes a broader view than the first prong in demonstrating “interoperability” with the NPSBN, but still limited to the RAN. In particular, the NPRM seeks comment on the role of the Commission to independently and impartially evaluate whether alternative plans comply with the interoperability-related requirements established by FirstNet, and suggests that the Commission does not have the ability to impose network policies or interoperability requirements on FirstNet.

24. The NPRM seeks comment on the view that if the Commission disapproves a plan, the opportunity for a State to conduct its own RAN deployment will be forfeited and FirstNet “shall proceed in accordance with its proposed plan for that State.”

25. The NPRM seeks comment on the view that the Commission’s approval of a State opt-out plan as meeting the interoperability criteria in section 6302(e)(3)(C) of the Act would not create a presumption that the State plan meets any of the criteria that NTIA is responsible for evaluating under section 6302(e)(3)(D) of the Act.

26. The NPRM seeks comment on how the Commission should document its decisions to approve or disapprove State opt-out requests under the statutory criteria. Should it issue a written decision or order explaining the basis for each decision, or would it be sufficient to provide more limited notice of approval or disapproval in each case without a detailed explanation?

F. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

27. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof for small entities.

28. The proposed rules will not affect any small entities.

G. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

29. None.

H. Paperwork Reduction Act of 1995 Analysis

30. This NPRM seeks comment on potential new information collection requirements. If the Commission adopts any new information collection requirements, the Commission will publish a document in the Federal Register inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501-3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

Ordering Clauses

31. Accordingly, IT IS ORDERED that, pursuant to sections 1, 4(i), 4(j), 301, 303, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 301, 303, 316, as well as title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law No. 112-96, 126 Stat. 156, the Notice of Proposed Rulemaking IS HEREBY ADOPTED.

32. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments on the NPRM on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** and reply

comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

List of Subjects

47 CFR Part 90

Radio.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene Dortch,
Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r) and 332(c)(7) , and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112-96, 126 Stat. 156.

2. Revise § 90.532 to read as follows:

§ 90.532 Licensing of the 758-769 MHz and 788-799 MHz Bands; State opt-out election and alternative plans.

(a) First Responder Network Authority license and renewal. Pursuant to section 6201 of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012), a nationwide license for use of the 758–769 MHz and 788–799 MHz bands shall be issued to the First Responder Network Authority for an initial license term of ten years from the date of the initial issuance of the license. Prior to expiration of the term of such initial license, the First Responder Network Authority shall submit to the Commission an application for the renewal of such license. Such renewal application shall demonstrate that, during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under the foregoing Act. A renewal license shall be for a term not to exceed ten years.

(b) State election to opt out of the First Responder Network Authority Nationwide Network. No later than 90 days after receipt of notice from the First Responder Network Authority under section 6302(e)(1) of the Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (Spectrum Act), any State governor electing to opt out and conduct its own deployment of a State radio access network pursuant to section 6302(e)(2)(B) of the Middle Class Tax Relief and Job Creation Act of 2012 shall file a notification of its election with the Commission. Such notification shall also certify that the State has notified the First Responder Network Authority and the National Telecommunications and Information Administration of its election.

(c) Filing of alternative State plans by States electing to opt out. No later than 180 days after filing notice of a State's election with the Commission under paragraph (b) of this section, the State Governor or the Governor's designee shall file an alternative plan with the Commission for the construction, maintenance, operation and improvements of the State radio access network. Such a plan shall demonstrate:

- (1) That the State will be in compliance with the minimum technical interoperability requirements developed under section 6203 of the Middle Class Tax Relief and Job Creation Act of 2012; and
- (2) Interoperability with the nationwide public safety broadband network.

BILLING CODE 6712-01

[FR Doc. 2016-22714 Filed: 9/20/2016 8:45 am; Publication Date: 9/21/2016]